Supreme Court of the United States

OCTOBER TERM, 1948.

No. 244

LIONEL G. OTT, Commissioner of Public Finance and Ex-officio City Treasurer of the City of New Orleans, Et Al.,

Appellants,

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY, AMERICAN BARGE LINE COMPANY AND UNION BARGE LINE CORPORATION.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

ORIGINAL BRIEF ON BEHALF OF APPELLANTS.

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MAY IT PLEASE THE COURT:

JURISDICTION OF THE COURT.

The jurisdiction of this Court is invoked on the grounds that a State Statute has, in effect, been held repugnant to

the Constitution of the United States by a United States Circuit Court of Appeals.

This judgment gives rise to an appeal to this court under the Judicial Code, Section 240, as amended (Title 28, U. S. C. A., Section 347 (b)), the pertinent provisions thereof reading as follows:

> (b) "Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

The State Statute in question is Act 59 of 1944 of the Legislature of Louisiana (Dart's La. General Statutes, Vol. 6, Section 8370) and particularly certain provisions of this statute, reading as follows:

> (a) * * *
>
> "Movable personal property"—All movable and regularly moved locomotives, cars, vehicles, craft, barges, boats and similar things, which have not the character of immovables by their nature or by the disposition of law, either owned or leased for a definite and specific term stated and operated (such, illustratively, but not exclusively, as the engines, cars and all rolling stocks of railroads; the boats, barges and other water-craft and floating equipment of water

transportation lines); but not including "other personal property," as hereinafter defined and expressly excluding the cars and rolling stock of sleeping car and express lines and all similar property and the rolling stock operated upon a per diem basis and such motor vehicles as are exempted by law from such taxation and the cars of private transportation and tank car lines, the valuation and assessment of which are covered and provided for by other laws.

* * * * * * *

(f) The "movable personal property" of such persons, firms, or corporations, whose line, route, or system is partly within this state and partly within another state or states, shall be by the commission valued for the purposes of taxation and by it assessed; and such assessment by it fairly divided, allocated and certified to each such parish and municipality as herein defined, within this state, within, through or under which same be operated; said division, allocation and certification to be determined in the following manner and according to the following method, such assessment to be there subject to all state taxes and to all parish taxes and to all municipal taxes, as same are herein defined and to none other.

1. The portion of all of such property, of such person, firm or corporation shall be assessed in the state of Louisiana, wheresoever, in the ratio which the number of miles of the line, within the state bears to the total number of miles of the entire line, route or system, here and elsewhere, over which such movable personal property is so operated or so used by such person, firm or corporation.

* * * * * * *

5. * * *

(g) For the purposes of such valuation, assessment and taxation in Louisiana such parishes and municipalities shall be hereby and declared, respectively, *to be a taxable situs in this state* of such movable personal property, whether same be operated entirely within or partly within and partly without this state and whether said tax-payer be a *resident or a non-resident* of Louisiana and *irrespective of whether or not here domiciled locally or otherwise.* (Italics ours.).

Appellees may seek to tell this Court that this Statute has not been held repugnant to the Constitution, but has rather been applied by the Courts below.

Suffice to say, we need only to qubte the language of the opinion of the United States District Court as affirmed by the Circuit Court of Appeals to prove the fallacy of this argument. The District Court, in its conclusions of law (R. P. 57) stated:

"The continued retention of any of the aforementioned illegal taxes, paid under protest by the respective parties in interest, constitutes a taking of property without due process of law, in violation of the Federal and State Constitutions."

The United States Circuit Court of Appeals for the Fifth Circuit, in its opinion, (R. P. 114), states:

"The judgments appealed from are affirmed in all these causes * * *."

The taxes were levied under Act 152 of 1932, as amended by Act 59 of 1944. Nothing could be plainer than the

language of the lower Courts in holding this Statute to violate the provisions of the Constitution.

Beyond this, if the lower Courts had applied the Statute, they would have **had** to hold for appellants, for the Statute provides **the situs in Louisiana** for the proportion taxed.

Thus, it is unescapable that this Court has jurisdiction under the unmistakable wording of the Judicial Code, Section 240, (b) (*supra*), calling for an appeal to this Court, as a matter of right!

The Federal question presented here is whether or not this Louisiana Statute violates the due process of law clause, or the commerce clause of the Constitution of the United States—such Federal question is extremely substantial and highly important—**it affects the very life of this Louisiana Statute,** and involves many other pending cases and hundreds of thousands of dollars in needed tax money.

The jurisdiction of this Court therefore is clearly apparent.

STATEMENT OF THE CASE.

Involved in this appeal are nine different suits. These cases were all consolidated for trial and argument in the District Court with separate judgments being rendered. They were likewise consolidated on appeal to the United States Circuit Court of Appeals for the Fifth Circuit—they are now before this Court in one appeal on a consolidated record.

While there are nine suits considered here, there are but three different plaintiffs and but two defendants—the Mississippi Valley Barge Line Company being plaintiff in two cases against the Commissioner of Public Finance for the City of New Orleans, and in two cases against the State Tax Collector for the City of New Orleans—the American Barge Line Company being plaintiff in two cases against the Commissioner of Finance for the City of New Orleans, and in two cases against the State Tax Collector for the City of New Orleans—the Union Barge Line Corporation being plaintiff in one suit against the Commissioner of Public Finance for the City of New Orleans.

The suits of the Mississippi Valley Barge Line Company and the American Barge Line Company are for the return of ad valorem taxes assessed on their watercraft and collected for the years 1944 and 1945, while the suit of the Union Barge Line Corporation is for the return of 1945 taxes assessed and collected by the City of New Orleans.

The record shows that the Mississippi Valley Barge Line Company and the American Barge Line Company are Delaware Corporations—but do no business in Delaware—that State being simply the resting place for their charters; and that the Union Barge Line Corporation is a Pennsylvania Corporation, doing some business in Pennsylvania.

The record further shows that none of the watercraft of Mississippi Valley and American was ever physically within the State of Delaware, but some, if not all, of the

watercraft of Union was present during the tax year within the State of Pennsylvania.

As the names imply, each of these appellees operate barge lines, being engaged in the transportation of freight by waterway, their barges and towboats operating on the Mississippi River and some of its tributaries to the City of New Orleans and the State of Louisiana, appellants assessing this tax on the proportionate rule basis, that is, assessing but a part of the valuation, for the portion of their lines in Louisiana, as compared to their whole system, in accord with *Act 152 of 1932*, as amended by *Act 59 of 1944 (Dart's Statutes, Sec. 8370)* of the Legislature of the State of Louisiana.

These taxes were paid under protest and segregated by the appellants in accordance with *Act 330 of 1938* of the legislature of the State of Louisiana, pending the final disposition of these cases.

The appellees claim that the City of New Orleans and the State of Louisiana have no constitutional right to collect this type of tax, whereas, both appellants maintain that these taxes are constitutional, legal and proper.

Appellees' petitions all follow the same general trend, that the tax is unconstitutional because it is a burden upon interstate commerce; because it violates the due process clause of the Constitution; and further, that the assessments were arbitrary and capricious.

Appellants deny that these taxes imposed an undue and unconstitutional burden on interstate commerce, deny

that they violate any due process clause of the Constitution, and allege that the only reasons that assessments were made in the manner in which they were made is because the appellees arbitrarily withheld the information requested by the Louisiana Tax Commission, leaving that Commission no other alternative but to make the assessments in the manner in which they were made. Appellants further set forth that the assessments were properly and legally made.

Appellants further contend that the question of the assessments, i. e., the method of making them and the amount thereof are not now before this Court for the reason that appellees did not avail themselves of the remedies given them by the Louisiana laws to question the amount or the method of the assessment, all of which is fully set forth in the laws of Louisiana, and which is known or should have been known to plaintiffs and their counsel.

The trial in the District Court resulted in judgment for each of these appellees, ordering the return of the taxes paid; the Court holding that in each of the cases at bar retention of these taxes by appellants constituted a taking of property without due process of law, in violation of the Federal Constitution for the reason that the property sought to be taxed had no situs in Louisiana.

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court in these nine cases, applying the principles in the old vessel taxation cases to the issue involved here, holding, in effect, that the

Louisiana Statute violates the due process of law clause of the Constitution of the United States.

An appeal was granted to appellants by this Honorable Court under Section 240 (b) *supra* of the Judicial Code (R. p. 130) and probable jurisdiction was noted (R. p. 136). These cases are now before the Court on this appeal.

SPECIFICATION OF THE ASSIGNED ERRORS URGED.

I.

THE CIRCUIT COURT OF APPEALS, AS WELL AS THE DISTRICT COURT, FELL INTO GRIEVOUS ERROR IN APPLYING THE PRINCIPLES IN THE OLD VESSEL TAXATION CASES TO THE ISSUES PRESENTED HERE, WHEN THERE IS NO FACTUAL NOR CONSTITUTIONAL BASIS FOR SO DOING, AND THEREFORE INCORRECTLY APPLIED THE LAW OF SITUS IN THESE CASES.

II.

THE CIRCUIT COURT OF APPEALS ERRED IN NOT APPLYING THE PROPORTIONATE RULE OF TAXATION AS TO MILEAGE IN THESE CASES, AS CALLED FOR IN THE LOUISIANA STATUTE.

III.

THE CIRCUIT COURT OF APPEALS ERRED IN NULLIFYING THE CLEAR PROVISIONS OF THE LOUISIANA STATUTE AND IN EFFECT HOLDING THAT THESE PROVISIONS OF THE LOUISIANA STATUTE VIOLATE THE DUE-PROCESS-OF-LAW CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

ARGUMENT.

At the outset, we might mention that all of the facts relating to the movement of all of this watercraft, were adduced from appellees' witnesses and records, as appellants had no access to this information. Yet from appellees' own evidence, the transcript is replete with clear and concise facts to show that each of these barge line companies do a tremendous, regular, yearly business in and out of New Orleans, with the result that if not the major, then a very substantial part of their business is done through that Port; in any event, more than is done in any other one port or State.

While the issue here, of course, is not a tax on the business done, yet of necessity this evidence clearly establishes the fact that the barges and tow-boats were in New Orleans and Louisiana so constantly, so regularly, and so permanently, as to give this State an actual situs of an average portion thereof for the purpose of this ad valorem tax.

The facts, therefore, are not in dispute here.

We ask only that the Court apply these facts to the issues.

Let us, briefly, therefore, point out the pertinent facts as related to each appellee:

The Facts as to the AMERICAN BARGE LINE COMPANY.

The boats of this Company operate between Pittsburgh, Pa., and **New Orleans, La.,** and make an occasional trip from St. Louis to **New Orleans;** their boats ply mostly on the Mississippi and Ohio Rivers; **their tows end in New Orleans;** some of their barges may go on to Texas with another Line's towboats or the tugs in New Orleans deliver them to local docks; the American's towboats then pick up another tow to go North. (R. pp. 59, 60.)

Their barges are unloaded in New Orleans by the Mississippi Valley Barge Line Company (R. p. 60.)

Their barges operate beyond New Orleans in connection with the River Terminals Corporation and the "Coyle" Lines (DeBardeleben Coal Corporation); barges going into the Intracoastal Canal are distributed by "Coyle" tugs; they work a small crew of men off and on in New Orleans to clean out their barges.

They maintain an office in the Maison Blanche Building in New Orleans. (R. p. 60.)

The American's boats are turned around as fast as possible in **every** port; their boats take on supplies in New Orleans and their towboats sometimes wait in New Orleans for barges coming across the Intracoastal Canal; they had 47 tows to New Orleans in 1943 and 73 tows to New Orleans in 1944; they were in and out of New Orleans **about once a week** and in 1944 they averaged **better than that;** New Orleans is the terminus of their lines. (R. p. 61.) Their towboats and barges stop in New Orleans and after the necessities of delay of days to make up the tow going northward, then proceed up the river. (R. p. 61.) (Emphasis ours.)

From these facts it is obvious the American Barge Line Company had some of its watercraft in New Orleans constantly, or every day in the year. Not necessarily the same towboat or barges, but some of their fleet was here at all times, as part of their system of operations; they had an **average** number of their towboats and barges here **at all times.** Consider how their tows arrived in New Orleans once a week or oftener—how their barges had to be left here for unloading or distribution (which necessarily takes several days)—how other of their barges were continually coming across the Intracoastal Canal to New Orleans, to be taken North—how some barges, when unloaded in New Orleans had to be reloaded in New Orleans—all part of an integrated system. It is therefore apparent that not for one minute

of one day of one year was all of their watercraft absent from New Orleans or Louisiana.

They admit in 1943 and 1944 the bulk of their tonnage originated in New Orleans and vicinity (R. p. 61).

It is testified they maintain their own office in New Orleans yearly; that none of their towboats or barges are allotted to any particular port (R. p. 61).

They state they use the wharves of the Dock Board of Louisiana for their barges; that New Orleans and Louisiana offer necessary fire, police and health protection; that the port of New Orleans had two fire-tugs, which was different from other ports (R. p. 61).

Their watercraft get the same use of these services as domestic vessels, with no cost for such services. Domestic vessels pay their full ad valorem taxes.

They carry some cargo down the Mississippi River to some points around New Orleans, to Port Sulphur, Louisiana; that the American owned approximately 200 barges in 1943 and 10 towboats; they own their own office furniture, fixtures and automobile in New Orleans; that some emergency repairs were made in this port; that New Orleans is the largest transfer point on their Line, and the southern terminus of the Line; their towboats are too big to go into the Intracoastal Canal; they loaded barges at other ports in Louisiana. (R. p. 62.)

From a summation of this evidence, it is clearly shown that New Orleans and Louisiana is the actual situs of

an average number of this watercraft for taxation purposes; the taxing authorities have only assessed but a portion of the total valuation, leaving to other States in which these boats operate, a substantial portion of the valuation for assessment purposes, if they so desire; the Louisiana assessment being made in conformity with the Statute. This is in line with the modern concept of taxation of integrated transportation systems, and which is the fair, equitable and common-sense method of taxation. Thus, it is obvious that the Court of Appeals erred in denying New Orleans and Louisiana the right to tax under Louisiana laws, upon the false finding that these boats had no situs in Louisiana.

The Facts as to the MISSISSIPPI VALLEY BARGE LINE COMPANY.

This Barge Line falls into the same category as the American Barge Line Company, except that the evidence shows its operations to be even larger in New Orleans and Louisiana.

They, too, transport freight in interstate commerce, on the Mississippi River between Pittsburgh on the East, and for the whole length of the Ohio River and on the Mississippi River **between St. Louis and New Orleans;** they have a terminal in New Orleans, "where the company has its own operations" (R. p. 63); they use a public terminal at Baton Rouge, Louisiana. It owns the towboats "Tennessee", "Ohio", "Indiana" and "Louisiana"; it also owns 85 to 100 barges; no towboat is especially allocated to any particular service, but they are sent to whatever

port requires them, and they are not permitted to remain in any particular port any length of time, but every effort is made to keep them moving the greatest possible number of days a year, because they earn nothing when tied to the bank. (R. p. 63.)

Occasionally there may be some delay to a towboat in New Orleans for repairs; the barges are assigned in much the same way that a **railroad would assign freight cars.** (R. p. 64.) (Emphasis ours.)

A certain number of barges go beyond New Orleans to Texas points by connecting lines but their towboats do not go beyond New Orleans. (R. p. 64.)

An attempt was made to show that for some particular month during the tax years in question, that a certain towboat did not come to Louisiana (R. p. 64) but their officers explain this by saying that towboats are assigned depending on circumstances, which change almost daily, by different cargo offerings, so that one boat may not be here for some time and another boat may repeat. (R. p. 63.)

Some of their stock is owned in Louisiana and New Orleans; the City of New Orleans is the largest port on their line; they have more employees in New Orleans than in Pittsburgh because the large percentage of their freight in New Orleans is handled by themselves; they operate a wharf on the Industrial Canal in New Orleans; their facilities are greater in New Orleans than in St. Louis; some of their boat repairs are made in New Or-

leans, especially under-water work, because there are only a limited number of places on the River where boats of that size can be pulled out of the water for that work. (R. p. 65.)

The volume of cargo handled in New Orleans is greater than in any other port with the possible exception of Pittsburg, but the boats are kept moving in order to realize as much profit as possible out of the operations; their boats also dock at Baton Rouge, La. (R. p. 66.)

Most of their barges are unloaded at the Galvez St. Wharf in New Orleans; it was pointed out by the official of this Corporation that some of their barges do not get unloaded in New Orleans in time for their next boat going North, and such barges lie in New Orleans for about a two week period, and a few barges sometimes longer; that the employees of the Mississippi Valley in St. Louis total 75, whereas their employees in New Orleans total 85 to 100; he explained that there is so much cargo in New Orleans because it is a terminal point and a port, and the only point on their lines through which import and export traffic moves; and it is therefore **larger** than **their other ports**; that they sent much out-of-the-country freight to New Orleans; he knows that Louisiana and New Orleans furnish fire, police and health protection for their boats; that they maintain a permanent office in New Orleans, a solicitation office being in the business section of New Orleans, and they own their own office building at the Galvez St. Wharf for the loading and unloading of their barges; that they own permanent installations at the Galvez St. Wharf in the form of tractors, trailers and

derricks; (R. p. 98) that they have been for 15 years at the Industrial Canal at Galvez St. and their wharf facilities are **greater** in New Orleans than at St. Louis. (R. pp. 66, 67.) (Emphasis ours.)

They secure fuel for their towboats in New Orleans and some fuel at Baton Rouge; that their boats were turned around as fast as possible in every port; that they have 400 feet frontage on the Industrial Canal in New Orleans and that their operations for 1944 were substantially the same as in 1943; that they also deliver and take cargo at Baton Rouge, and under their Interstate Commerce certificate they could take cargo from New Orleans to Baton Rouge. (R. p. 67.)

Another of their officials testified that most of their under-water repairs are done at New Orleans; that Pittsburgh and New Orleans are considerably ahead of St. Louis in tonnage; that they maintain about 100 employees in New Orleans; that they have their own equipment in New Orleans for servicing their barges. (R. p. 68.)

Mr. Hay, the dispatcher of this Line, who determines how their boats and barges shall move, testified that the Mississippi Valley operates on the Mississippi River and other Rivers **between Cincinnati, Ohio and New Orleans,** and **between St. Louis and New Orleans;** that Baton Rouge, La., is an intermediate stop; that their barges lie **idly** at **New Orleans** if there happens to be no use for them on their first up-bound boat, but most likely these barges would catch the next up-bound boat; that their towboats were in New Orleans from 12 to 48 hours on

each trip, depending on whether emergency repairs were necessary; he further testified that the Mississippi Valley maintains a **repair shop in New Orleans** to make those repairs which must be made to keep the equipment moving out of that port: (R. p. 68.) (Emphasis ours.)

During the year 1943 their towboats with a string of barges would arrive at New Orleans **once a week** or **slightly oftener,** and that this service was **constant throughout the year;** that they used whichever barges were most convenient to go to New Orleans and that **their four owned towboats ran in and out of New Orleans in 1943; that these four owned towboats did not go to St. Louis** during 1943 with possibly one or two exceptions, but operated on a **regular schedule** between Cincinnati and New Orleans; that a chartered boat made the run from St. Louis to Cairo and made connections with their **through schedules** between Cincinnati and New Orleans. (R. pp. 68, 69.)

> "Q. But Mr. Hay would you say offhand that there were **more** of your equipment including towboats and **barges** in **New Orleans** during 1943 **than** there were in St. Louis.
>
> "A. **Yes, because it is a much bigger port."** (R. P. 69). (Emphasis ours.)

He further testified that their four owned towboats came out of Cincinnati and picked up any barges from St. Louis at Cario, Illinois; that during 1943 New Orleans **alone** would handle about **one-half** of their cargo, and all other intermediate points between New Orleans and their point

of origin would about handle, in the aggregate, the other half. (R. p. 69.) (Emphasis ours.)

He stated that their tows coming into New Orleans are unloaded at their Galvez St. Wharf, some barges are then loaded there and some barges are distributed at points along the Mississippi River for loading in the New Orleans harbor; that their towboats do not tie up for any number of days at their Galvez St. Wharf, except where major repairs are necessary, and these are usually done at Todd-Johnson Drydocks at New Orleans. (R. p. 69.)

He testified that their reports show, for example, that Barge MV-49 (R. p. 69) arrived in New Orleans on September 10th, 1943 and did not leave New Orleans until October 28th, 1943, and he testified that this seemed to have been a barge that either remained in New Orleans for lack of cargo for its use outbound, or it could have been placed somewhere on the River awaiting arrival of expected cargo, or it could have been awaiting its chance to be temporarily repaired before it could be used; he showed that temporary repairs, to their barges, unless of an unusual nature, could be made **with their own facilities at New Orleans;** their records further show (R. p. 70) that Mississippi Valley Barge BM 57 arrived in New Orleans on November 17th, 1943, and remained in New Orleans through the balance of 1943 as no date is shown of leaving New Orleans in 1943; that (R. p. 70) shows their barge in New Orleans from July 31st, 1943, to September 13, 1943; that their smaller barges, which number 50 out of their 80, **might lay over in New Orleans** for a greater than average length of time

due to the lack of need for the barge outbound, or to favor tow make-up; that (R. p. 70) shows Barge MB 38 stayed in New Orleans from August 23rd, to October 2nd, 1943; that (R. p. 70) shows Barge MB 46 in New Orleans from February 21st, 1943 to March 30th, 1943; that Barge MB 30, which is one of their larger type of barges (R. p. 70) stayed in New Orleans from August 31st, 1943 to October 2nd, 1943, and that it is possible that there may have been a few other barges that missed the first boat out of New Orleans through lack of cargo or because it was necessary to temporarily repair the barge before it could be used; that they attempted to maintain as quick a turn-around with their equipment in St. Louis and Cincinnati and other points, as in New Orleans, in order to keep their equipment moving; that New Orleans is **the terminus of their line,** and when they reach New Orleans they turn around to go north after discharging cargo and picking up new cargo; that they have **their own maintenance man in New Orleans** who looks after any necessary temporary repairs; that their principal port in Louisiana is New Orleans and secondarily Baton Rouge; **that all of their tows either originate in New Orleans or teminate in New Orleans,** if they are in Louisiana; that if there is no cargo for an empty barge in New Orleans and it was not needed at some other part, **the barge would no doubt wait in New Orleans for cargo;** that there is no port, over any other, where their barges are laid up indefinitely. (R. p. 70.) (Emphasis ours.)

Thus, it is clearly shown that the portion of watercraft of the Mississippi Valley Barge Line Company, sought to

be taxed here; is never out of the City of New Orleans nor the State of Louisiana, for even a single day. Of course, not every one of their barges and their towboats at one time, but surely a portion of their fleet as a part of their integrated system of freight transportation—similar to the rolling stock of the railroads, some of whose cars may not come into Louisiana for months at a time but others making repeated trips, and on which they pay a tax on a proportionate mileage basis, exactly, as sought to be collected here. The evidence clearly shows that a substantial **average** of their towboats and barges are in New Orleans **and Louisiana constantly throughout the year.**

The Mississippi Valley is unable to show that this equipment spends more time in any other State, and from the evidence above, it is unlikely that their watercraft is in any other State as much as in Louisiana. They are in New Orleans **regularly and constantly at least every week with their tows,** and necessarily their barges stay here for a length of time, **definitely over-lapping the next trip, etc.** This is their biggest port and where they do most of their business from a watercraft standpoint. They have even larger facilities than the American Barge Line here, with their permanent wharfage space, about 100 employees, their own fleet maintenance men, etc. We do not believe it necessary to elaborate any further that an average portion of this watercraft is permanently in Louisiana, throughout the taxing year, making Louisiana the situs for the portion taxed, in accordance with the established and well recognized tax apportionment principles approved many, many times by this Court.

The Facts as to the UNION BARGE LINE CORPORATION.

This Company falls into a different category than the American Barge Line Company and the Mississippi Valley Barge Line Company. The two latter are Delaware corporations, who do no business in Delaware, and whose watercraft never at any time go into Delaware. The Union, however, is a Pennsylvania corporation apparently doing business in Pennsylvania, and whose watercraft also go into that State.

The Union operates on the Mississippi River System and connecting waterways, **between New Orleans and Pittsburgh;** under their tariff, they have five days free time for unloading their barges in New Orleans; they had a man in New Orleans to handle their business in 1944, whom they employed on a salary basis; their barges are handled indiscriminately throughout their whole course of operations, depending on the kind of barge needed for loading particular cargo at various points, etc.; all of their barges and towboats are kept moving as quickly as possible at all ports; most all of their traffic on the Intracoastal Canal is towed for them by other boats over to New Orleans, and the only waiting time at New Orleans was in making connections with one of their towboats; **that their barges may wait in New Orleans from one to three days for their own boat to pick them up;** that they pick up their barges in other ports in Louisiana as soon as they have a towboat to do so; they owned nine towboats and about one hundred twenty-two barges during the period in question; that some of their tow-

boats and barges made repeated trips to New Orleans in 1944, while some may not have gone to New Orleans at all during this period; the Union had a boat out of New Orleans **about once a week** during 1944; that their principal ports in Louisiana are New Orleans and Baton Rouge and that they normally run their boats to New Orleans only. (R. p. 71.) (Emphasis ours.)

In 1944, every trip ended in New Orleans with their boats and came back, but not so the barges; that no barge has a man on it; that the barge is delivered to a terminal specified by the consignee or the shipper and then moved to another point in New Orleans for cargo to be transported northbound; that they had an arrangement with other Barge Line Companies operating in and out of New Orleans for the transfer of their barges or the tying up of their barges; that their barge shipments from the North originated principally in the Pittsburgh District and in certain instances on the way down they picked up cargo at Memphis for delivery at New Orleans and other points likewise in between; that in 1944, 75% of their tonnage was up-bound and 25% down-bound, and **they very often had to take empty barges down to Louisiana to bring them back loaded;** that their principal commodities that were taken into New Orleans for delivery to that port were manufactured steel products and the principal commodities out of New Orleans were petroleum products; that the substantial portion of the up-bound cargo originated in Baton Rouge, La.; that in an emergency they did repair work to their watercraft in New Orleans; that the **five days** free time allowed in New Orleans for **unloading** was arrived at through shipper ex-

perience, in loading a barge of 500, 600 or 700 tons would take about that much time; they presume that the fire, police and health departments in New Orleans and the State of Louisiana are ready and available for service to their boats or crews when needed; that they attempt to fuel their boats in Baton Rouge, or if needed in New Orleans; (R. p. 72). The official testifying wouldn't know whether any of their crews got any of their lay-off time in New Orleans during 1944. (R. p. 72.) (Emphasis ours.)

Here again an attempt is made by appellee to show by charts that a few of their barges may not have come into Louisiana during 1944 as well perhaps as one or two of their towboats. The answer is of course that others made repeated trips in **constant** and **regular** service. (R. p. 74.) The test here is not of taxing a particular towboat or barge, but the tax is on watercraft of an integrated system of transportation, using the docks and wharves of New Orleans and Louisiana in a regular service throughout the year, in inland waterways transportation, in the same manner as the approved system of taxing rolling stock of other transportation companies.

From the facts adduced, here again is a Corporation doing a tremendous waterway transportation business in New Orleans and Louisiana. Their tows were in New Orleans **every** week, leaving barges to be unloaded, then to be loaded, which time could not expire before another of their tows came in. Thus some of their watercraft was here at all times during the year in question—not as any spasmodic or irregular service but on regular

schedule. They had an average number of their towboats and barges here constantly and continuously throughout the year. There can be no substantial difference here, therefore, from railroad or other modes of regular interstate transportation.

Under the law, then, Louisiana has a right to its fair share of the ad valorem taxes on the watercraft of the Union Barge Line Corporation.

RESUME OF THE FACTS APPLICABLE TO EACH OF THE THREE APPELLEE BARGE LINES.

The salient features of the foregoing admitted facts, applicable to each barge line, are that New Orleans is the terminus of each line—that **all** of their tows end in New Orleans; and that they arrive in that City, AT LEAST ONCE A WEEK OR OFTENER! (Miss. Valley R. p. 68—American R. p. 61—Union R. p. 71.)

When we therefore consider that each barge line comes into, **and ties up**, in New Orleans once a week or oftener, with a long string of barges—that the towboats **leave** all their barges in New Orleans to be unloaded there or some to be transported farther—that the towboats spend, at the very least, 24 to 48 hours in New Orleans making up their up-river tow with their other barges which had been **waiting** in New Orleans, re-loaded with different commodities (and as the Union Line says (R. p. 72), they may need up to five days in New Orleans to **reload** their barges) that they must traverse at least 400 miles upstream in Louisiana before they cross into another state,

which necessarily takes several days (and likely stop in Baton Rouge, Louisiana, over 100 miles upstream and which is a large center for petroleum products)—obviously, then, they must meet and pass another of their own tows IN LOUISIANA coming down the Mississippi River, in order to average arrival in New Orleans once a week or oftener, and are therefore daily passing from one end of the State to the other. Consequently, there MUST be an average number of their barges in Louisiana every day in the year—and just as emphatically there is not one minute in the year when they do not have such average equipment in Louisiana! Also, an average number of the barges left behind in New Orleans from the down-river tow must necessarily be in Louisiana until they can be picked up by their own towboat on one of the succeeding tows. This constant and continual over-lapping places this average amount of watercraft PERMANENTLY in Louisiana!

These are the only facts necessary for this Court to consider to decide this issue!

I.

THE CIRCUIT COURT OF APPEALS, AS WELL AS THE DISTRICT COURT, FELL INTO GRIEVOUS ERROR IN APPLYING THE ISSUES IN THE OLD VESSEL TAXATION CASES TO THE ISSUES PRESENTED HERE, WHEN THERE IS NO FACTUAL NOR CONSTITUTIONAL BASIS FOR SO DOING, AND THEREFORE INCORRECTLY APPLIED THE LAW OF SITUS IN THESE CASES.

The District Court went awry in attempting to show that this watercraft never acquired a tax situs in Louisiana by using as a basis for its findings the jurisprudence in the old vessel taxation cases (R. pp. 47, 48, 49), and the Circuit Court of Appeals fell into exactly the same error. (R. pp. 112, 113.)

The issues presented here, clearly do not call for the application of those legal principles to the cases at bar. These issues are far removed from the principles laid down in the old steamship cases.

We are not considering here the assessment and taxation of an individual boat or vessel (as in the vessel taxation cases), but we are considering an integrated system of transportation, **wholly** within certain states, and only in those states, and being taxed as a **unit**, with a proportion of such taxes being alloted to Louisiana. This is wholly and completely different from endeavoring to ascertain the taxing situs of an **individual** vessel.

We are very familiar with these individual vessel taxation cases and this Court is infinitely more familiar with this jurisprudence having had occasion to review it in many decisions.

A summation of this jurisprudence was had in the comparatively recent case of *Northwest Airlines, Inc. v. State of Minnesota*, 322 U. S. 292, 65 S. Ct. 26, where, in the footnote of the dissenting opinion (65 S. Ct. pp. 961, 962) it is noted:

> "The rule, generally applied, that vessels are taxable only by the domicile, Hays v. Pacific Mail S. S. Co., 17 How. 596, 597, 15 L. Ed. 254; St. Louis v. Wiggins Ferry Co., 11 Wall. 423, 430, 431, 432, 20 L. Ed. 192; Morgan v. Parham, 16 Wall. 471, 475, 21 L. Ed. 302; Transportation Co. vs. Wheeling, 99 U. S. 273, 279, 280, 25 L. Ed. 412; Ayer & Lord Tie Co. v. Kentucky, 202 U. S. 409, 421, 26 S. Ct. 679, 682, 50 L. Ed. 1082, 6 Ann. Cas. 205; Southern Pacific Co. v. Kentucky, 222 U. S. 63, 68, 69, 77, 32 S. Ct. 13, 14, 15, 18, 56 L. Ed. 96, is no exception to these rules. **For vessels ordinarily moye on the high seas, outside the jurisdiction of any state, and merely touch briefly at ports within a state. Hence they acquire no tax situs in any of the states at which they touch port, and are taxable by the domicile or not at all.** See Pullman's Palace-Car Co. v. Pennsylvania, 141 U. S. 18, 23, 11 S. Ct. 876, 878, 35 L. Ed. 613; Southern Pacific Co. v. Kentucky, supra, 222 U. S. 75, 32 S. Ct. 17, 56 L. Ed. 96. The suggestion in the earlier cases, see Hays v. Pacific Mail S. S. Co., supra, 17 How. 600, 15 L. Ed. 254; City of St. Louis v. Wiggins Ferry Co., supra; Morgan v. Parham, supra, that vessels were to be taxed exclusively at the home port, whether or not

it was the domicile, was rejected in Ayer & Lord Tie Co. v. Kentucky, supra, and Southern Pacific Co. v. Kentucky, supra, and has never been revived. But where the vessels operate wholly on waters within one state, they have been held to be taxable there, Old Dominion Steamship Co. v. Virginia, 198 U. S. 299, 25 S. Ct. 686, 49 L. Ed. 1059, 3 Ann. Cas. 1100, and not at the domicile, Southern Pacific Co. v. Kentucky, supra, 222 U. S. 67, 72, 32 S. Ct. 14, 16, 56 L. Ed. 96, a result which, like the rule of apportionment in taxing railroad cars, avoids the burden of multiple taxation.

"Similarly, taxes by the state of domicile or other states on the carrier's entire property including rolling stock have been sustained if apportioned according to mileage, Pittsburgh, etc., R. Co. vs. Backus, 154 U. S. 421, 14 S. Ct. 1114, 38 L. Ed. 1031; Adams Express Co. v. Ohio State Auditor, 165 U. S. 194, 17 S. Ct. 305, 41 L. Ed. 683; Id., 166 U. S. 185, 17 S. Ct. 604, 41 L. Ed. 965, American Express Co. v. Indiana, 165 U. S. 255, 17 S. Ct. 991, 41 L. Ed. 707; Adams Express Co. v. Kentucky, 166 U. S. 171, 17 S. Ct. 527, 41 L. Ed. 960; Wells, Fargo & Co. v. Nevada, 248 U. S. 165, 39 S. Ct. 62, 63 L. Ed. 190; St. Louis, etc., R. Co. v. State of Missouri ex rel. and to Use of Hagerman, 256 U. S. 314, 41 S. Ct. 488, 65 L. Ed. 946; Southern R. Co. v. Watts, 260 U. S. 519, 43 S. Ct. 192, 67 L. Ed. 375; Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362, 60 S. Ct. 968; 84 L. Ed 1254, or a combination of relevant factors, Rowley v. Chicago & N. W. R. Co., 293 U. S. 102, 55 S. Ct. 55, 79 L. Ed. 222; Great Northern R. Co. vs. Weeks, 297 U. S. 135, 56 S. Ct. 426, 80 L. Ed. 532. Likewise gross receipts taxes, if properly apportioned or otherwise limited to receipts from business done within the state, have been upheld,

Erie R. Co. vs. Pennsylvania, 21 Wall. 492, 22 L. Ed. 595; State of Maine v. Grand Trunk R. Co., 142 U. S. 217, 12 S. Ct. 121, 163, 35 L. Ed. 994, as explained in Galveston, etc., R. Co. v. Texas, 210 U. S. 217, 226, 28 S. Ct. 638, 640, 52 L. Ed. 1031; United States Express Co. v. Minnesota, 223 U. S. 335, 32 S. Ct. 211, 56 L. Ed. 459; Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 38 S. Ct. 373, 62 L. Ed. 827; Pullman Co. v. Richardson, 261 U. S. 330, 43 S. Ct. 366, 67 L. Ed. 682, cf. New York, Lake Erie & W. R. Co. v. Pennsylvania, 158 U. S. 431, 15 S. Ct. 896, 39 L. Ed. 1943.". (Emphasis ours.)

It would serve no useful purpose therefore to individually analyze the prior vessel taxation cases because they are not at all analogous to the issues presented here.

This type of transportation is not at all similar to steamship travel, nor to air lines—its nearest analogy would be railroads.

Steamships travel singly on the high seas—commercial airplanes fly singly in all directions—but these barge lines travel on a **fixed route** through the rivers, canals or other inland waterways on just as much a fixed route as do the railroads, except water is substituted for rails. An integrated unit of barges is made up in a tow, the same as a passenger or freight train is made up, picking up and dropping barges at different stops as is done by railroads picking up and dropping cars.

Appellees would argue strenuously that barges and towboats are capable of being appraised singly and therefore are not part of an integrated system of transportation—yet locomotives, freight cars and passenger cars are capable of being appraised singly and without relation to another engine or car belonging to the line—so what can such an argument prove? Yet in the case of the railroads, such appraising is never done in this manner, but is accomplished on the unit basis—exactly as has been done here with the barge lines.

Appellees would likewise argue that some of their barges and towboats were seldom if ever in Louisiana—yet others were there constantly on repeated trips. No one denies that some of the railroads' equipment might never come into a state during the year while other pieces are there on repeated occasions. Yet the rolling stock is recorded as a unit and a proportion taken. This is the only practical, feasible and common-sense method of assessment.

Why consider charts, made by appellees themselves, showing percentage of time of their individual towboats and barges in Louisiana when the undisputed facts prove beyond question that some of their watercraft is operating in Louisiana every day in the year. What practical difference does it make if some of their boats and barges are in the state more than others?

Even, if, as appellees vigorously contend, these barges and towboats are constantly on the move "for they earn nothing when tied to the bank" then the percentage mile-

age formula (as set forth in the Louisiana Statute) is intrinsically correct, fair and equitable. For they must be constantly travelling over their same mileage and the percentage of mileage in Louisiana is the correct proportion of the tax for an average number of this watercraft **must** be in Louisiana every day of the year. New Orleans and Louisiana are the termini of their regular schedule and they must be in that place constantly and consistently throughout the year, as they only go to and through the same places and the same waters at all times; their tows are made up to **all** terminate in Louisiana.

Louisiana is perfectly willing to consider in their total mileage all waters and places to which they send their watercraft in order to figure its percentage of taxation.

Appellees only travel over certain waterways regularly throughout the year, and while mathematical exactitude is not essential, yet it can be easily and readily calculated in these cases.

The assessment has been made as a unit—it could be made in no other practical, workable manner. If the percentage is smaller than actually assessed, appellees can secure a reduction in the assessment, as such information has been constantly sought from appellees by the Louisiana Tax Commission and arbitrarily refused by these three barge lines.

The principles of the old steamship cases do not apply here. We have no quarrel with such jurisprudence but it does not touch the issues presented here.

This is an entirely new phase of an old question and must be considered as such. This Court has never passed on the right of a State through which barge lines operate regularly and constantly and continuously throughout the year, to tax these integrated interstate barge lines on the proportionate mileage basis.

The nearest comparison would be the railroad cases—which gives the States through which they operate—the right to a proportion of the tax.

No other jurisprudence fits the issues here.

This Court has always had the courage and foresight to take cognizance of changing economic conditions in this country in deciding issues on a logical and equitable basis when there has been no violation of the Federal Constitution. That is what we ask here, for certainly a State has a right to its taxes, and the burden of proof is upon the taxpayers to show a prohibition in the Constitution. This appellees cannot do.

Appellees must show a clear violation of the 14th Amendment to prevail. This, we respectfully submit, they cannot do.

Commercial barge lines, in competition to rail and road movement are a comparatively new field. Other methods of transportation, with which they compete, must pay taxes on their equipment, and it is only fair and just that such barge lines bear their fair share of taxes.

It would be a monumental injustice to foreclose to the States the right to tax this watercraft equipment, operated in such constant and regular movement, when other similar transportation companies, are forced to pay.

Louisiana is not asking here to tax one boat, but to a proportionate tax on a transportation system doing business in Louisiana, the exigencies of which business places some of its equipment in Louisiana every day of the year.

Since the Louisiana Statute (Act 59 of 1944) fixes the situs in Louisiana for the proportion sought to be taxed, it is incumbent upon appellees to show such Statute unconstitutional.

Even against their inability to show this, the record clearly indicates that a portion of this equipment is permanently in Louisiana, demonstrating Louisiana to be the situs of this average portion of such watercraft.

II.

THE CIRCUIT COURT OF APPEALS ERRED IN NOT APPLYING THE PROPORTIONATE RULE OF TAXATION AS TO MILEAGE IN THESE CASES, AS CALLED FOR IN THE LOUISIANA STATUTE.

In line with the facts presented here, is the case of *Pullman's Palace Car Company v. Pennsylvania*, 141

U. S. 18, 11 S. Ct. 35, 35 L. ed. 613, wherein the Court said:

> "The cars of this company within the state of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the state; and the state has not taxed them because of their being so employed, but because of their being within its territory and jurisdiction. The cars were continuously and permanently employed in going to and from upon certain routes of travel. If they had never passed beyond the limits of Pennsylvania, it would not be doubted that the state could tax them, like other property within its borders, notwithstanding they were employed in interstate commerce. The fact, that instead of stopping at the state boundary, they cross that boundry **in going out and coming back,** cannot affect the power of the state to levy a tax upon them. The state, having the right, for the purposes of taxation, to tax any personal property found within its jurisdiction, **without regard to the place of the owner's domicile,** could tax the specific cars which at a given moment were within its borders. The route over which the cars travel extending beyond the limits of the state, particular cars may not remain within the state; but the company has at all times substantially the same number of cars within the state, and continuously and constantly uses there a portion of its property; and it is distinctly found, as matter of fact that the company continuously, throughout the periods for which these taxes were levied, carried on business in Pennsylvania, and had about 100 cars within the state. (Emphasis ours.)

"The mode which the state of Pennsylvania adopted to ascertain the proportion of the company's property upon which it should be taxed in that state was by taking as a basis of assessment such porportion of the capital stock of the company as the number of miles over which it ran cars within the state bore to the whole number of miles in that and other states over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the states through which these cars run, the company would be assessed upon the whole value of its capital stock, and no more. The validity of this mode of apportioning such a tax is sustained by several decisions of this Court in cases which came up from the Circuit Courts of the United States, and in which, therefore, the jurisdiction of this Court extended to the determination of the whole case, and was not limited, as upon writs of error to the State Courts, to questions under the constitution and laws of the United States."

In the earlier case of *Marye vs. Baltimore and Ohio Railroad Co., 127 U. S. 117, 8 S. Ct. 1037,* the Court had occasion to observe:

"It is not denied, as it cannot be, that the state of Virginia has rightful power to levy and collect a tax upon such property used and found within its territorial limits, as this property was used and found, if and whenever it may choose, by apt legislation, to exert its authority over the subject. It is quite true, as the situs of the Baltimore & Ohio Railroad Company is in the state of Maryland, that also, upon general principles, is the situs of all its personal property; **but for purposes of taxation,** as well as for

other purposes, that **situs** may be fixed in **whatever locality** the **property** may be **brought and used by its owner by the laws of the place where it is found.** If the Baltimore & Ohio Railroad Company is permitted by the State of Virginia to bring into its territory, and there **habitually to use and employ** a portion of its movable personal property, and the railroad company chooses so to do, it would certainly be competent and legitimate for the state to impose upon such property, thus used and employed, **its fair share of the burdens of taxation** imposed upon other similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected, in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an **appraisement and valuation of the average amount of the property thus habitually used,** and collected by distraint upon any portion that might at any time be found. . . . "the mere fact that they were employed as vehicles of transportation in the interchange of interstate commerce would not render their taxation invalid." (Emphasis ours.)

In both the *Marye* Case (1888) and the *Pullman's Palace-Car Co. Case* (1891) *supra*, as well as in the later cases of *American Refrigerator Transit Co. vs. Hall, 174 U. S. 70, 19 S. Ct. 599, 43 L. ed. 899 (1899), Union Refrigerator Transit Co. vs. Lynch, 177 U.S. 149, 20 S. Ct. 631, 44 L. ed. 708 (1900); Union Refrigerator Transit Co. vs. Kentucky, 199 U. S. 194, 26 S. Ct. 36, 50 L. ed. 150 (1905); Union Tank Line Co. vs. Wright, 249 U. S. 275, 39 S. Ct. 276,*

63 L. ed. 602 (1919), and Johnson Oil Ref. Co. vs. Oklahoma, 290 U. S. 158, 54 S. Ct. 152, 78 L. ed. 238, (1933) this Court has uniformly held that where a corporation brings into a state **other than the other granting it the corporate charter,** a **portion** of its **movable property** to therein employ and use the same in the conduct of its business operations for profit, **carried on as one entity,** in more than one state, such **permanently established portion** may be constitutionally taxed in said second state, by resorting to the generally adopted and approved method of first valuing as a unit the entirety of the taxable corporate property employed in the interstate operations, taking into consideration the uses to which it is put and all elements making up its aggregate value, and then ascertaining what proportion of the corpus may be fairly taxed as being within the bounds of the State in interest, without violating any Federal restriction.

The Circuit Court of Appeals fell into grievous error in not holding Louisiana has established that a portion of the property sought to be taxed was "regularly and habitually used and employed" within Louisiana. The facts clearly show that a portion of each of the watercraft of these Lines were regularly and habitually used and employed in Louisiana—certainly not the same towboat and barge (no more than the same railroad car)—but definitely the same average number of this watercraft. Because of their bulk and slower mode of travel, these barges were in Louisiana longer at each time than a railroad car, which can unload and re-load in one day. Equally, a towboat cannot travel as fast as a locomotive.

An important milepost in the juridical history of this Court was its decision in *Old Dominion Steamship Company v. Virginia, 198 U. S. 299, 25 S. Ct. 686, 49 L. Ed. 1059, 3 Ann. Cas. 1100,* wherein the Court held that vessels could be taxed in a State other than the domicile of the owner or the home port of the vessel. Then, as this Court held, if watercraft on navigable waters can have a situs **of its own,** regardless of the owner's domicile, it squarely supports appellants' contention as to the issue here.

While it is true, the watercraft was on navigable waters wholly within one state in the *Old Dominion* case (*supra*), we can certainly see no logical reason why an average portion of the watercraft of an integrated interstate waterway carrier cannot have a permanent situs of its own in one state.

The case of *Northwest Airlines v. Minnesota (supra)* of course held that the State of domicile (Minnesota) had the right to tax this entire fleet of airplanes but would not hold that other states could not also tax a part of this fleet, stating that this issue was not then before the Court. Mr. Justice Black, in his concurring opinion, would not in that case "foreclose consideration of the taxing rights of States other than Minnesota". (64 S. Ct. p. 955.)

The majority opinion, with Mr. Justice Frankfurter as the organ of the Court, sustains appellants' contention, when it sets forth:

> ". . . the continuous protection by a State other than the domiciliary State—that is, protection throughout the tax year—has furnished the constitu-

tional basis for tax apportionment in these interstate commerce situations, and it is on that basis that the tax laws have been framed and administered." (64 S. Ct. p. 953.)

And here, as in the case of *Pullman's Palace Car Company v. Pennsylvania (supra)*, cited in the majority opinion of the *Northwest Airlines* case *(supra)*, the barges of these companies here are "daily passing from one end of the State to the other".

The majority opinion in the *Northwest Airlines* case *(supra)* therefore, sets forth the principles which appellants contend grants Louisiana this power to tax, as does the dissenting opinion, when Mr. Chief Justice Stone, joined by three other members of the Court, sets forth in such dissenting opinion:

> "It is no longer doubted that interstate business 'must pay its way' by sustaining its fair share of the property tax burden which the states in which the interstate business is done may lawfully impose generally on property located within them. See Western Live Stock v. Bureau, 303 U. S. 250, 254, 255, 58 S. Ct. 546, 548, 549, 82 L. Ed. 823, 115 A. L. R. 944, and cases cited * * * or if the tax on its personal property regularly used over fixed routes in interstate commerce, both within and without the taxing state, is fairly apportioned to its use within the state, as has until now been the rule as to railroad cars. Marye v. Baltimore & Ohio R. Co., 127 U. S. 117, 123, 124, 8 S. Ct. 1037, 1039, 1040, 32 L. Ed. 94; Pullman's Palace-Car Co. v. Pennsylvania, 141 U. S. 18, 11 S. Ct. 876, 35 L. Ed. 613; American Refrigerator Transit Co. vs. Hall,

174 U. S. 70, 19 S. Ct. 599, 43 L. Ed. 899; Union Refrigerator Transit Co. vs. Lynch, 177 U. S. 149, 20 S. Ct. 631, 44 L. Ed. 708; Union Refrigerator Transit Co. vs. Kentucky, 199 U. S. 194, 26 S. Ct. 36, 50 L. Ed. 150, 4 Ann. Cas. 493; Germain Refining Co. v. Fuller, 245 U. S. 632, 38 St. Ct. 63, 62 L. Ed. 521; Union Tank Line v. Wright, 249 U. S. 275, 39 St. Ct. 276, 63 L. Ed. 602; Johnson Oil Refining Co. vs. Oklahoma, 290 U. S. 158, 54 St. Ct. 152, 78 L. Ed. 238.

* * * * * * *

"* * * They do not deny that the planes are constitutionally subject, to some extent, to personal property taxes by the states through which they pass. Our decisions, as will presently appear, establish that they are, and that vehicles of interstate transportation moving from the state of the owner's domicile over regular routes within the jurisdiction of other states also acquire a tax situs there, so that, to an extent presently to be considered, they may be taxed by each of the states through which they pass.

* * * * * * *

"Of controlling significance in this case are certain elementary propositions, so long accepted and applied by this Court that they cannot be said to be debatable here, although they seem not to have been taken into account in deciding this case either here or in the Minnesota Supreme Court. The first is that the constitutional basis for the state taxation of the airplanes, which are chattels, is their physical presence within the taxing state, and not the domicile of the owner. Union Refrigerator Transit Co. v. Kentucky, supra, 290 U. S. 161, 162, 54 S. Ct. 153, 154, 78 L. Ed. 238, Johnson Oil Refining Co. v. Oklahoma, supra, and

cases cited. In this respect, as this Court has often pointed out, the taxation of chattels rests on a different basis than does the taxation on intangibles, which have no physical situs and may be reached by the tax gatherer only through exertion of the power of the state over the person of those who have some legal interest in the intangibles. Union Refrigerator Transit Co. v. Kentucky, supra, 199 U. S. 205, 206, 26 S. Ct. 38, 39, 50 L. Ed. 150, 4 Ann. Cas. 493; Schwab v. Richardson, 263 U. S. 88, 92, 44, S. Ct. 60, 62, 68 L. Ed. 183; Frick v. Pennsylvania, 268 U. S. 473, 494, 45 S. Ct. 603, 606, 69 L. Ed. 1058, 42 ALR 316; Blodgett v. Silberman, 277 U. S. 1, 16—18, 48 S. Ct. 410, 416, 72 L. Ed. 749; Wheeling Steel Corp. v. Fox, 298 U. S. 193, 209, 210, 56 St. Ct. 773, 776, 777, 80 L. Ed. 1143; Curry v. McCanless, 307 U. S. 357, 363—366, 59 St. Ct. 900, 903-906, 83 L. Ed. 1339, 123 A. L. R. 162; Graves v. Elliott, 307 U. S. 383, 59 St. Ct. 913, 83 L. Ed. 1356; Graves v. Schmidlapp, 315 U. S. 657, 62 St. Ct. 870, 86 L. Ed. 1097, 141 A. L. R. 948; State Tax Com. v. Aldrich, 316 U. S. 174, 62 S. Ct. 1008, 86 L. Ed. 1358, 139 A. L. R. 1436.

"A state may, within the Fourteenth Amendment, tax a chattel located within its limits, although its owner is domiciled elsewhere, Brown v. Houston, 114 U. S. 622, 5 S. Ct. 1091, 29 L. Ed. 257; Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715; Pullman's Palace-Car Company v. Pennsylvania, supra; Old Dominion S. S. Co. v. Virginia, supra.

"But due process precludes the state of the domicile from taxing it unless it is brought within that state's boundaries, Delaware, L. & W. R. Co. v. Pennsylvania, 198 U. S. 341, 25 S. Ct. 669, 49 L. Ed. 1077; Union Refrigerator Transit Co. v. Kentucky, supra; Frick v.

Pennsylvania, supra, 268 U. S. 489, et seq., 45 S. Ct. 604, et seq., 69 L. Ed. 1058, 42 A. L. R. 316. It is plain then that for present purposes and so far as the Fourteenth Amendment is concerned respondent's airplanes, which are chattels regularly moving over fixed interstate routes, are subject in some measure to the taxing power of every state in which they regularly stop on their interstate mission.

"In some instances it may be that vehicles of transportation moving interstate are so sporadically and irregularly present in other states that they acquire no tax situs there, Hays v. Pacific Mail S. S. Co., 17 How. 596, 15 L. Ed. 254; City St. Louis v. Wiggins Ferry Co., 11 Wall. 423, 20 L. Ed. 192; Morgan v. Parham, 16 Wall. 471, 21 L. Ed. 302; Ayer & Lord Tie Co. v. Kentucky, 202 U. S. 409, 26 S. Ct. 679, 50 L. Ed. 1082, 6 Ann. Cas. 205, and hence remain taxable to their full value by the state of the domicile because they are not taxable elsewhere, New York Central & H. R. R. Co. v. Miller, supra; Southern Pacific Co. v. Kentucky, supra. But that is not the case as to any of the planes here involved. And our decisions established that, except in the case of tangibles which have nowhere acquired a tax situs based on physical presence, and for that reason remain taxable at the domicile even if never present there, the state's power to tax chattels depends on their physical presence and is neither added to nor substracted from because the taxing state may or may not happen to be the state of the owner's domicile.

* * * * * * *

"This Court has never denied the power of the several states to impose a property tax on vehicles used in interstate transportation in the taxing state:

It has recognized, as we have seen, that such instruments of interstate transportation, at least if moving over fixed routes on regular schedules, may thus acquire a tax situs in every state through which they pass. And it has met the problem of burdensome multiple taxation by the several states through which such vehicles pass by recognizing that the due process clause or the commerce clause or both preclude each state from imposing on the interstate commerce involved an undue or inequitable share of the tax burden. In Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362, 365, 60 S. Ct. 968, 970, 84 L. Ed. 1254, we recently considered 'the guiding principles for adjustment of the state's right to secure its revenues and the nation's duty to protect interstate transportation.' We declare that 'The problem to be solved is what portion of an interstate organism may appropriately be attributed to each of the various states in which it functions.' And, in sustaining the tax apportioned according to mileage, upon the entire property, including rolling stock, of an interstate railroad, imposed by Tennessee, the state of the owner's domicile, in which its principle business office and over 70% of its trackage was located, we said that the state could not 'use a fiscal formula * * * to project the taxing power of the state plainly beyond its borders.'

"This Court has accordingly held invalid state taxation of vehicles of interstate transportation unless the tax is equitably apportioned to the use of the vehicles within the state compared to their use without, whether the tax is laid by the state of the domicile or another. Such an apportionment has been sustained when made according to the **mileage traveled within and without the state,** Pullman's Palace-Car

Co. v. Pennsylvania, supra, 141 U. S. 26, 11 S. Ct. 879, 35 L. Ed. 613, or the average number of vehicles within the taxing state during the tax period. Marye v. Baltimore & Ohio R. Co., supra; American Refrigerator Transit Co. v. Hall, supra, 174 U. S. 82, 19 S. Ct. 604, 43 L. Ed. 899; Union Refrigerator Transit Co. v. Lynch, supra. (Emphasis ours.)

"But if the tax is laid without apportionment or if the apportionment, when made, is plainly inequitable so as to bear unfairly on the commerce by compelling the carrier to pay to the taxing state more than its fair share of the tax measured by the full value of the property, this Court has set aside the tax as an unconstitutional burden on interstate commerce, whether it be in form on the rolling stock, Union Refrigerator Transit Co. v. Kentucky, supra; Union Tank Line v. Wright, supra; Johnson Oil Refining Co. v. Oklahoma, supra, or on the carrier's entire property, Fargo v. Hart, 193 U. S. 490, 24 S. Ct. 498, 48 L. Ed. 761; or on a franchise or right to do business, Allen v. Pullman's Palace Car Co., 191 U. S. 171, 24 S. Ct. 39, 48 L. Ed. 134; Wallace v. Hines, 253 U. S. 66, 40 S. Ct. 435, 64 L. Ed. 782; Southern R. Co. v. Kentcky, 274 U. S. 76, 47 S. Ct. 542, 71 L. Ed. 934; cf. Norfolk, etc., R. Co. v. Pennsylvania, 136 U. S. 114, 10 S. Ct. 958, 34 L. Ed. 394.

* * * * * * *

"The taxation of vehicles of interstate transportation in a business organized and conducted as is petitioner's is as capable of apportionment, and the insupportable multiple tax burden on interstate commerce is as readily avoided by apportionment of the tax, as in the case of the taxation of tangible and intangible property of railroads, railroad car supply

companies, express companies, and the like which we have repeatedly held to be subject to the rule of apportionment.

* * * * * *

"* * * These findings establish that, while no particular plane is permanently within any state, its planes are continuously flying in, and an average number or a percentage of the total is regularly, i. e., 'permanently' within, each of the states through which they pass. Here, as was the case in Pullman's Palace-Car Co. v. Pennsylvania, supra, (141 U. S. 18, 11 S. Ct. 877, 35 L. Ed. 613), the same planes are 'running into, through, and out of' each of the states along petitioner's routes and an 'average' of planes is continuously within each of these states."

And even as Mr. Justice Jackson says in his concurring opinion in the *N. W. Airlines* case *(supra)*: "There is a physical basis within the state for the taxation of rolling stock which is lacking in the case of airplanes."

There is likewise a physical basis within the State for the taxation of these barges because they are **always** within the State. They can always be seen, heard and touched, the same as rolling stock. They cannot be taken out of the inland waters of the State, except by their regular means of propulsion. An airplane may fly into the stratosphere and lose all touch with land—but not so this inland watercraft. It is within the State at all times and subject to the same degree of permanence and protection as rolling stock.

There can be no legal difference, as to taxing situs, between rolling stock and this type of watercraft. Obvious-

ly, there is a physical difference because one moves on land and one on inland waters. But the waters moved on are the property of the State—the same as the land railroads use. Because the surface use of the waters is free does not make the watercraft exempt from taxation. The railroads have to pay for the right-of-ways they use and additionally pay taxes on such real estate, and additionally pay a proportionate tax on their rolling stock.

The Interstate Commerce Commission regulates and controls the movements of the railroads and likewise regulates and controls the movements of these appellee barge lines. (R. p. 35.)

The river beds and canal beds are the property of the states enclosing them—only the right of navigation thereon is free. The fact that this watercraft pays nothing to travel upon the waters does not destroy the fact that they are permanently within the sovereign confines of the state, thus clearly establishing a taxing situs.

Additionally, these barges are but a bulk of steel or wood—without even propulsion power of their own—the same as freight and passenger railroad cars. They are not "vessels" capable of navigating the high seas but can only physically travel upon restricted waters and only in certain places.

Thus it can be clearly seen that there can be no sound legal differentiation, as to tax apportionment, between railroad rolling stock and inland barges. They both travel through defined states, **on a fixed route,** and in regular

interstate commerce. Their route is just as fixed as railroads, because they cannot leave the rivers or canals—are confined within their banks—and travel between various cities **regularly** and **constantly** as shown by the undisputed testimony of the barge lines themselves.

III.

THE CIRCUIT COURT OF APPEALS ERRED IN NULLIFYING THE CLEAR PROVISIONS OF THE LOUISIANA STATUTE AND IN EFFECT HOLDING THAT THESE PROVISIONS OF THE LOUISIANA STATUTE VIOLATE THE DUE-PROCESS-OF-LAW CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

As has been shown, there is no dispute as to the facts. All of the facts were adduced from appellees themselves for they were solely in their possession. We are simply asking the Court therefore to apply the uncontradicted facts to the issues presented here.

Appellees own facts therefore show that their lines run into Louisiana and they operate these lines on a regular schedule. They operate on a fixed route or on a route that cannot be changed, or at least has never been changed. Each of these three barge lines admit that their tow boats with a long string of barges arrive in New Orleans, the southern part of Louisiana, **at least once a week or oftener;** they then go back North, and the process is maintained continually and constantly.

No matter how appellees attempt to juggle these facts, they cannot deny the fact of their watercraft being in and out of Louisiana regularly and continually. They tried to make much of the fact that the boats are unloaded and loaded as quickly as possible, but they also have to do this in every port. The faster they move, the more often they are in Louisiana—the slower they move, the longer they are in Louisiana.

These admitted facts cannot be manipulated to show that an average portion of this watercraft is out of Louisiana even for one day of the year. That, therefore, places the situs of this average number of watercraft in the State, which meets all constitutional requirements to furnish the basis for the taxes.

The commerce clause is not offended because Louisiana is only taxing that portion that is in Louisiana and which portion no other State has the right to tax.

The concurring opinion of Mr. Justice Frankfurter in the case of *State Tax Commission v. Aldrich* (1942), 316 U. S. 174, 62 S. Ct. 1008, points out:

> "Each State of the Union has the same taxing power as an independent government, except in so far as that power has been curtailed by the Federal Constitution.
>
> "The taxing power of the States was limited by the Constitution and the original ten amendments in only three respects: (1) no State can, without the consent of Congress, lay any imposts or duties on imports or exports, except as necessary for executing its

inspection laws, Art. I, Sec. 10, Cl. 2; no State can, without the consent of Congress lay any tonnage duties, Art. I, Sec. 10 Cl. 3; and (3) by virtue of the Commerce Clause, Art. I, Sec. 8, Cl. 3, no State can tax so as to discriminate against Interstate commerce."

These limitations on the taxing power remain today and the only one that could have any pertinency to this case is the last, so that, once it is shown that the State of Louisiana has furnished protection and service to the watercraft, as it admittedly has, the question is if the tax levied by the State and the City of New Orleans on these vessels is discriminatory against interstate commerce.

The State of Louisiana and the City of New Orleans, so the record shows, makes available to the watercraft health, police and fire protection and dock facilities, the same as it does domestic vessels. It cannot be said therefore, that Louisiana and New Orleans lack jurisdiction to tax because they give nothing in return for the tax imposed. We shall pass, therefore, to a discussion of the non-discriminatory nature of the tax as respects interstate commerce.

It is undeniable that a state may tax the instruments used in interstate commerce without offending the commerce clause of the Federal Constitution *(Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530, 8 S. Ct. 961; Coverdale v. Arkansas-Louisiana Pipe Line Co., 303 U. S. 604, 58 S. Ct. 736)*, even where the nature of the commerce is maritime *(Old Dominion S.S. Co. v. Virginia, 198 U. S. 299, 305, 25 S. Ct. 686)* and the cases where such

taxes have been invalidated by the courts are limited to situations where a number of states would have an equal right and opportunity to impose similar taxes, resulting in a pyramiding of tax burdens which would destroy or seriously impair such commerce *(Western Live Stock Co. v. Bureau, 303 U. S. 250, 255, 256, 58 S. Ct. 546)*, or cases where the statute provided an illegal method of computing the tax, as in the case of a tax on gross receipts from interstate business. *Puget Sound Stevedoring Co. v. Tax Commission, 302 U. S. 90, 93, 94, 58 S. Ct. 72; Crew Levick Co. v. Pennsylvania, 245 U. S. 292, 38 S. Ct. 126; Givin White & Prince v. Henneford, 305 U. S. 434, 59 S. Ct. 325.*

The application of the tax herein complained of cannot result in any pyramiding of taxes which would tend to destroy or seriously impair interstate commerce because the Louisiana statute imposing it is levied on a proportionate basis only. *(Act 152 of 1932*, as amended by *Act 59 of 1944. (Dart's Louisiana Statutes, Section 8370.)*

If other States through which the appellees' watercraft travel would impose ad valorem taxes based upon Louisiana's method of assessment, the sum total would amount to no more than a single assessment of the total value of the watercraft. Vessels engaged in intrastate commerce in Louisiana are assessed for their full value, so that the statute does not discriminate in favor of domestic commerce and the appellees do not pretend that it does.

That those engaged in interestate commerce are expected to bear their just share of the burden of state taxa-

tion and enjoy no immunity from state taxation merely because they are engaged in such commerce is shown by the case of *McGoldrick v. Berwind-White Coal Mining Co., 307 U. S. 33, 60 S. Ct. 388, 362,* in which the Supreme Court said:

> "But it was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing business, Western Live Stock v. Bureau of Revenue, 303 U. S. 250, 254, 58 S. Ct. 546, 548, 82 L. Ed. 823, 115 A. L. R. 944. Not all state taxation is to be condemned because, in some manner, it has an effect upon commerce between the states; * * *. Non-discriminatory taxation of the instrumentalities of interstate commerce is not prohibited."

In order for the Court in invalidate the tax on appellees' watercraft, it must point to some prohibition in the Federal Constitution and, since it appears that no such prohibition is contained in either the Fifth or the Fourteenth Amendment or in the commerce clause, the State of Louisiana may impose the tax. In *Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23,* Chief Justice Marshall, as the organ of the Court, said:

> "The grant of the power to lay and collect taxes is, like the power to regulate commerce, made in general terms, and has never been understood to interfere with the exercise of the same power by the states; and hence has been drawn an argument which has been applied to the question under consideration. But the two grants are not, it is con-

ceived, similar in the terms of their nature. Although many of the powers formerly exercised by the states, are transferred to the government of the Union, yet the state governments remain, and constitute a most important part of our system. The power of taxation is indispensable to their existence, and is a power which, in its own nature, is capable of residing in, and being exercised by, different authorities at the same time. We are accustomed to see it placed, for different purposes, in different hands. Taxation is the simple operation of taking small portions from a perpetually accumulating mass, susceptible of almost infinite division; and a power in one to take what is necessary for certain purposes, is not, in its nature, incompatible with a power in another to take what is necessary for other purposes. Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. In imposing taxes for state purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states. When, then, each government exercises the power of taxation, neither is exercising the power of the other. But, when a state proceeds to regulate with foreign nations, or among the several states, it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do. There is no analogy, then, between the power of taxation and the power of regulating commerce * * *." (Pp. 199, 200.)

"In a separate clause of the enumeration, the power to regulate commerce is given, as being entirely distinct from the right to levy taxes and imposts, and as being a new power, not before conferred. The constitution; then, considers these powers as substantive and distinct from each other; and so places them in the enumeration it contains. The power of imposing duties on imports is classed with the power to levy taxes, and that seems to be its natural place. But the power to levy taxes could never be considered as abridging the right of the states on that subject; and they might, consequently have exercised it by levying duties on imports or exports, had the constitution contained no prohibition on this subject. This prohibition, then, is an exception from the acknowledged power of the states to levy taxes, not from the questionable power to regulate commerce. (Pp. 201, 202.)

"The right to regulate commerce, even by the imposition of duties was not controverted; but, the right to impose a duty for the purpose of revenue, produced a war as important, perhaps, in its consequences to the human race, as any the world has ever witnessed.

"These restrictions, then are on the taxing power, not on that to regulate commerce; and presuppose the existence of that which they restrain, not of that which they do purpose to restrain." (Pp. 202, 203.) (Emphasis ours.)

The watercraft here taxed do not just occasionally and sporadically come into Louisiana. They are, as shown by the record, on regular schedule between the ports of Louisiana and other ports on the Mississippi and Ohio

Rivers; they are constantly pursuing regular routes of travel in and out of the state, so that the protection afforded by the state and the facilities offered by it to this watercraft is continuous, and such a situation furnishes a constitutional basis for the imposition of an ad valorem tax.

The due process of law clause of the Fourteenth Amendment is likewise not offended because Louisiana is not trying to project its tax arm beyond the confines of the State, and is only taxing that portion of property over which it has dominion and control.

Louisiana gives the same protection to that portion of watercraft of appellees' barge lines which is always in Louisiana the same as it does to its domestic vessels and, therefore, by no stretch of the imagination can this issue be reasoned to offend the due process of law clause. Louisiana has the legal right to its share of these taxes because it is the only state which gives permanent protection throughout the year to that portion of the watercraft constantly within its borders, which no other state can nor does give.

Be it remembered that the only issue before this Court is whether Louisiana can secure its portion of taxes and not whether the state of domicile can exact ad valorem taxes. As an admitted matter of fact, the states of domicile here do not levy taxes, but whether they do or do not has no bearing on Louisiana's right to tax. Certainly Louisiana is not trying to collect its share of the taxes because some other state does not. The formula used by Louisiana taxing authorities violates no constitutional pro-

vision and even if any other state or states should choose to tax is of no moment here because even if they did, Louisiana's method prevents a duplication of taxes or multiplication of taxes and consequently can offend no provision of the Constitution.

In passing, we might point out that it would be a rare innovation if Delaware, the corporate domicile of both the American Barge Line and the Mississippi Valley Barge Line, would be given a right to also tax, for Delaware is simply the resting place of the charter of these corporations with all of this watercraft permanently absent from the State of Delaware and with no business whatsoever, in connection with the operation of these barge lines, being conducted from that state.

Even if the vessel taxation vessels could be said to apply here (which we respectfully contend they cannot), we do not believe this Court could hold that Delaware, the corporate domicile of American and Mississippi Valley could qualify as the "domicile" to tax these towboats and barges, when this watercraft does not enter that State nor was ever intended to go there, and when no operation of these lines is carried on from Delaware, that State being simply the resting place for a charter. What protection could Delaware give? It "can afford no substantial protection to the property taxed and cannot effectively lay hold of any interest in the property to compel payment of the tax". *Union Refrigerator Transit Co. v. Kentucky (supra); Frick v. Pennsylvania,* 268 U. S. 473, 489, et. seq.

Yet tangible property must have a taxing situs somewhere—it cannot wholly escape taxation! *Southern Pacific Co. v. Kentucky (supra).*

And as Mr. Justice Frankfurter, as the organ of the Court, in the *Northwest Airlines* case *(supra)*, says:

> "* * * But no judicial restriction has been applied against the domiciliary State except when property (or a portion of Fungible Units) is permanently situated in a State other than the domicilary state."

However, it is not on the negative proposition that Delaware, the corporate domicile, cannot tax, but on the positive, undisputed facts which makes Louisiana the situs of a portion of these vehicles of commerce which makes appellants' position sound and which makes appellees' position untenable.

Therefore, as contended, the right of the State of domicile to tax is not the issue here, and need not be passed on by this Court. Appellants' position is that each of these three barge lines have given their watercraft a situs of its own as a result of its operations, and such situs of an average portion is clearly in Louisiana for the purpose of these taxes. This is in line with the principles laid down by this Court for over half a century and never deviated from.

THE METHOD OF ASSESSMENT EMPLOYED HERE IS LEGAL AND CONSTITUTIONAL.

The assessment by the Louisiana Tax Commission violates no prohibition of the Constitution of the United States either as to method or amount. Counsel for appellees may seek to argue that the method employed by the Louisiana Tax Commission in assessing this watercraft was "arbitrary and capricious and based on no known fact of value"; as set forth in complaints. Suffice to say, neither the District Court nor the Court of Appeals found any merit whatever in this contention and disposed of it without any difficulty.

The assessment was made by the Louisiana Tax Commission, the official assessment body of the State, and made in conformity with the statute, that is, on the basis of the mileage of appelees' system and route in Louisiana as compared with their total mileage of their route or system. The Louisiana Tax Commission sought by every means at is command to secure exact information from appellees as to the value of their boats and complete mileage of their system as admitted in the stipulation (R. pp. 33, 34). The Commission sent numerous letters and sent its field men to appellees in an attempt to secure this information, and it was the appellees who acted arbitrarily by absolutely refusing to give the information. The Commission then made the assessment "from the best information it was able to obtain", which is in compliance with Louisiana law. If appellees do not like the method or amount of assessment, there is ample legal procedure under Louisiana law to make any adjustments necessary.

Appellees did not choose to do this and that is why this issue is now before this Court.

Values were not taken out of the "thin air", as counsel might hope to have this Court believe, but were taken from similar tow boats and barges of other lines whose value was disclosed to the Tax Commission. (R. p. 76.) There is absolutely no merit to appellees' contention as shown by the Court of Appeal decision. (R. pp. 113, 114.)

Mathematical exactitude has never been a constitutional requirement, but the proportionate mileage basis employed by Louisiana can give mathematical exactitude if appellees would but give the exact information rather than arbitrarily withholding it. These barge lines operate on a definite amount of mileage, which is known to them, and the mileage in Louisiana is definitely ascertainable so as to present no problem to give this assessment exactness to which no one could complain.

We dislike to burden the Court with the mention of this issue, but because it may be argued, we believe that the above few remarks should amply dispose of it. Appellees' argument here is untenable.

CONCLUSION.

Because what Louisiana is doing here, in the method of tax apportionment, conflicts with no jurisprudence of this Court—because it violates no prohibition of the Constitution of the United States—because such taxation is made in conformity with the Statute of a sovereign State—because it is fair and equitable and puts no undue burden on interstate commerce—because such method of taxation

banishes the twin spectres of multiple taxation and tax exemption—we respectfully pray that this Court reverse the ruling of the United States Circuit Court of Appeals for the Fifth Circuit in these nine cases and render judgment for appellants so that justice, equity and fair play may prevail!

Respectfully submitted,

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CERTIFICATE.

This is to certify that copies of this Brief have been served on opposing counsel on this .... day of December, 1948.

.....

APPENDIX.

Act No. 152 of 1932.

Section 1. Be it enacted by the Legislature of Louisiana, That Section 29 of Act 170 of 1898, entitled "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation and by prescribing the method of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State and setting forth the purposes for which said levy is made", be and the same is hereby amended and re-enacted so as to read as follows:

Section 29. That the real estate, road-beds, roads, iron, tracks, depots, sheds, freight sheds, warehouses, oil and water tanks, round houses, shops, superstructures, excavations and channels of railroads; canals, and other transportation, telephone and telegraph companies, shall be assessed and taxed in the parish or assessment district where located. Ferry boats, tugs, barges, or other water craft, or rolling equipment, as well as landings used in connection with the water transfer of passengers, locomotives, passenger and freight trains, automotive equipment, and vehicles of every kind and character, that ply between two parishes shall be assessed equally one-half in each parish but where the ferries or water transportation, including rolling equipment, etc., used in connection therewith, should ply between more than two parishes, the assessment shall be divided equally among the several parishes, and where said ferries or water transportation

including rolling equipment, etc., used in connection therewith plies between both banks of the same parish they shall be assessed wholly in the parish in which they may be located or operated; and all other property not especially exempted from taxation by Article X, Section 4 of the Constitution of 1921 belonging to said railroad, canal, etc., shall be assessed and taxed at the domicile or principal office of said railroads, canals, etc., as contemplated by Article XIII, Section 4 of the Constitution of 1921; but the rolling stock or movable property of any railroad company, telegraph company, canal company or other transportation company, whose line lies partly within this State and partly within another State, or States, or whose sleeping cars run over any line lying partly within this State or partly within another State, or States, shall be assessed in this State in the ratio which the number of miles of the line within the State has to the total number of miles of the entire lines.

Section 2. That all laws or parts of laws in conflict herewith, be and the same are hereby repealed.